

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE WILLIAM C. MILLER,

Debtor.

BAP No. UT-04-044

WILLIAM C. MILLER,

Appellant,

v.

Bankr. No. 02T-23053
Chapter 7

ORDER DENYING EMERGENCY
MOTION

May 10, 2004

DAVID L. MILLER, Trustee, ROBERT
CUMMINGS, RANDY SUGIHARA,
CRAIG BUTTERS, TOM GORMLEY,
MILLER AMERICA, INC., SPS
AMERICAN CAR CARE CENTER,
FRANK L. ALLRED, INSTANT CASH
PAWN & LOAN, SS AUTO BROKERS,
INC., and COREY L. ERICKSEN,

Appellees.

Before McFEELEY, Chief Judge, MICHAEL, and NUGENT, Bankruptcy Judges.

The matter before the Court is the “Emergency Motion for Order of Immediate Injunction and/or, Restraining Order Against David L. Miller, Trustee of the Estate of William C. Miller, and All His Professionals, Including McDowell & Gillman, Price Waterhouse Coopers, Erkelens & Olson Auctioneers, Vic’s Keys, and the Petitioners of the Involuntary Chapter 7, and Their Attorney Lester Perry, for Violation of the Stay, Previously Granted by the BAP No. 02-082, and for Violation of Local Court Order of Conditions Imposed on Sale, Recently Denied, and under Appeal to the BAP as a New Appeal, and/or, for Immediate Turnover Order of Assets of the Estate to the Debtor, or Other Unbiased Party, and/or for Stay Against Any Further Action, for Protection of the Estate, in That These Assets Have Been Sold, Potentially, Illegally, at an Auction,

Based on an Involuntary Chapter 7, Filed in Bad Faith and Currently under Appeal to the BAP as a New Appeal, to One Party, Presumably a Brek Anderson or Associate, Who Is Currently Moving, or Planning to Move the Assets of the Entire Estate to Another Location, and/or for Vacating or Reversing Estate Sale Due to the above Violations, Pending Both Appeals” (“Emergency Motion”), filed by the Appellant on April 26, 2004.

Discussion

The Emergency Motion is 14 pages. It is accompanied by a 29-page affidavit and a 390-page appendix. The Debtor has gone to great lengths to attempt to persuade this Court of the impropriety of actions of the creditors who filed the involuntary petition against the Debtor and their attorney; the Trustee, his attorneys, accountants, and auctioneers; and the bankruptcy court. The Emergency Motion argues repeatedly for a “full investigation.” *See, e.g.*, Emergency Motion at 14. It is not clear which entity is to conduct this investigation. To the extent the Debtor wishes that this Court investigate the conduct of participants in his bankruptcy case, his request will be denied. That is not the role of this Court.

To the extent the Debtor requests a stay pursuant to Fed. R. Bankr. P. 8005, it does not appear that the Debtor has complied with applicable procedures. Rule 8005 provides that a motion “must ordinarily be presented to the bankruptcy judge in the first instance.” Fed. R. Bankr. P. 8005. The Emergency Motion does not state that the request was first presented to the bankruptcy judge. The Court could deny the Emergency Motion on procedural grounds, but because it also appears that the Emergency Motion has no merit, the Court will address the merits.

As the Debtor acknowledges in the Emergency Motion, this Court must consider four factors when deciding whether to grant a stay or injunction: (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will suffer irreparable injury unless the stay is granted; (3) whether

granting the stay will result in substantial harm to the other parties; and (4) the effect of granting the stay upon the public interest. *See Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (reviewing standard for stay under Fed. R. Civ. P. 62(c)), *quoted in McClendon v. City of Albuquerque*, 79 F.3d 1014, 1020 (10th Cir. 1996); *see also In re Forty-Eight Insulations Inc.*, 115 F.3d 1294 (7th Cir. 1997) (reviewing standard for stay under Bankruptcy Rule 8005).

The Emergency Motion was filed in two appeals: BAP number UT-04-043, and BAP number UT-04-044. Number UT-04-043 is an appeal of the bankruptcy court's April 29, 2004, Order Denying Debtor's Motion to Vacate or Postpone Sale ("Sale Order"). Number UT-04-044 is an appeal of the bankruptcy court's April 27, 2004, Order Denying Debtor's Second Motion to Dismiss and Order Denying Debtor's Third Motion to Dismiss.

Addressing the merits of Appellant's Emergency Motions, we cannot conclude from the record at hand that Debtor is likely to prevail on appeal. The assets have been sold, and Debtor has failed to ask the Bankruptcy Court to enter its own stay order concerning the consummation of the sale. Indeed, even were the Bankruptcy Court's Order authorizing the sale to be reversed, the validity of the sale would be unaffected absent a showing that the purchasing entity purchased the property in other than good faith. *See* 11 U.S.C. § 363(m). Additionally, an order preventing the party who purchased the assets at the bankruptcy auction from moving or disposing of the assets would cause substantial harm to that party, and Debtor has made no showing that the purchaser's prejudice would outweigh his own. As articulated by Congress in its enactment of § 363(m), the public interest favors finality of bankruptcy sales. The Emergency Motion will therefore be denied.

Requirement of Paper Filing

The Court notes that the Emergency Motion and its exhibits, totaling over 400 pages, was filed with this Court piecemeal, in twelve different faxes. Staff of the

Court's Clerk's Office spent a considerable amount of time consulting with the Debtor and combining the different faxes, of which many pages overlapped, into one document. The Debtor supplemented the multiple faxes with an e-mail stating that some of the pages appear out of order; however, the pages were assembled in the order faxed. The Debtor did not obtain the prior authorization of the Clerk before sending an e-mail, as required by 10th Cir. BAP L.R. 8008-1(e). The Court further notes that this is not the first time that the Debtor has filed a lengthy paper in multiple faxes, the assembly of which disproportionately consumed the resources of the Clerk's Office, or has filed an e-mail without obtaining advance authorization. Debtor's practices seriously strain the resources of this Court and cannot continue.

This Court has the inherent authority to regulate practice before it and to take measures necessary to insure that litigants before it follow its rules of procedure and do not strain its limited resources. *See Tripati v. Beaman*, 878 F.2d 351, 352 (10th Cir. 1989); *Winslow v. Hunter (In re Winslow)*, 17 F.3d 314, 315 (1994). In those cases (and others) the Tenth Circuit authorized the imposition of various stringent filing restrictions on litigants using courts' inherent powers granted in 28 U.S.C. §1651 (as to any courts of the United States).

From the date of this Order, the Debtor is barred from filing any further paper, in these and any other pending or future appeals or petitions, by fax. Further, the Debtor may not file any paper by e-mail. Every motion, pleading, or other paper filed with this Court must be filed in paper format, and the Debtor must send an original and three copies, pursuant to Fed. R. Bankr. P. 8008(a). The Clerk's Office will be directed to strike any paper that is not filed in accordance with these requirements. Because these limitations do not materially restrict Debtor's access to this Court, are made in response to Debtor's repeated violations of the letter or intent of this Court's Rules, and do not place any substantive restrictions upon what he can file as was done in *Tripati* and *Winslow*, we deem it appropriate to decree and enforce this bar without affording the

Debtor an opportunity to be heard.

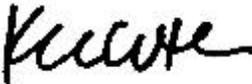
Conclusion

Accordingly, it is HEREBY ORDERED that:

1. The Emergency Motion is DENIED.
2. The Debtor may not file any further paper, in these and any other pending or future appeals or petitions, by fax or by e-mail. Every motion, pleading, or other paper filed with this Court must be filed in paper format, and the Debtor must send an original and three copies, pursuant to Fed. R. Bankr. P. 8008(a). The Clerk's Office is directed to strike any paper that is not filed in accordance with these requirements.

For the Panel:

Barbara A. Schermerhorn, Clerk of Court

By: 
Deputy Clerk